

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Common Cause Georgia, as an)	
organization,)	
)	
Plaintiff,)	
)	Case No. 1:18-CV-05102-AT
v.)	
)	The Honorable Amy Totenberg
Brian Kemp, in his official capacity as)	
Secretary of State of Georgia,)	
)	
Defendant.)	

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO STRIKE
THE DECLARATIONS OF MICHAEL MCDONALD, EDGARDO
CORTÉS, AND KEVIN MORRIS**

Defendant’s motion to strike the Declarations of Michael McDonald, Edgardo Cortes, and Kevin Morris (collectively, the “Declarations”) should be denied for the reasons set forth below.

The information provided in the Declarations is highly relevant and does not violate the Court’s Order. Defendant’s chief complaint seems to be that Plaintiff’s witnesses reviewed data *in addition* to the data specifically referenced in the Court’s order. However, as explained by Dr. McDonald, in order to meaningfully analyze the data, Dr. McDonald needed to review not only the number of provisional ballots cast (the data provided by Defendant) but also the number of total ballots cast (not provided by Defendant). *See* McDonald Decl. Indeed, Defendant’s own expert

seems to agree that the data provided by Defendant was not sufficient to analyze statistical significance. *See* Decl. of John Alford, Doc. 45 at ¶ 6. Rather than merely stating as such in response to the Court’s Order—as Defendant did—Plaintiff downloaded the additional data necessary from Defendant’s own website.¹ Plaintiff’s Declarations are thus not irrelevant.

Nor do the Declarations contravene the Court’s Order. While the Court ordered Plaintiff to analyze the data submitted by Defendant, at no time did the Court order that Plaintiff could not use other data to analyze Defendant’s data, or that Plaintiff could not submit additional evidence in support of Plaintiff’s motion. Plaintiff submitted highly relevant evidence to the Court: (a) the Declaration of Dr. McDonald, who analyzed the data provided, using other publicly-available data necessary to the analysis; (b) the Declaration of Mr. Morris, who explained the method by which he obtained this additional data; and (c) the Declaration of Mr. Cortés, who responded directly to the Court’s concerns raised at the November 8 hearing about whether relief in this case could actually have an impact on the outcome of the elections. This evidence is all highly relevant.

In addition, Rule 12(f) does not apply here. That rule provides that a court may “strike from a pleading . . . any redundant, immaterial, impertinent, or

¹ *See* <https://results.enr.clarityelections.com/GA/91639/Web02-state.220747/#/>.

scandalous matter.” Defendant has not moved to strike a pleading and the rule is therefore inapplicable. *See, e.g., Sum of \$66,839.59 Filed in the Registry v. United States IRS*, 119 F. Supp. 2d 1358, 1359 n.1 (N.D. Ga. 2000) (noting that a motion to strike under Rule 12 is not the proper method for challenging an affidavit); *see also* 2 Moore’s Federal Practice § 12.37[2] (2018).

For these reasons, Plaintiff respectfully requests that the Court consider the Declarations.

This 10th day of November, 2018.

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